

United States
Circuit Court of Appeals
For the Ninth Circuit.

WILLIAM R. CASTLE, LORRIN A. THURSTON
and ALFRED L. CASTLE, Trustees Under
the Will of JAMES BICKNELL CASTLE,
Plaintiffs in Error,
vs.

HAROLD K. L. CASTLE and the TERRITORY
OF HAWAII,
Defendants in Error.

Transcript of Record.

Upon Writ of Error to the Supreme Court of the
Territory of Hawaii.

FILED
MAR 20 1922
F. D. MONCKTON,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

IN PROBATE—AT CHAMBERS.

No. 5383.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Stipulation.

IT IS HEREBY STIPULATED by and between the Territory of Hawaii by Harry Irwin, Attorney General, W. R. Castle and H. K. L. Castle, Executors under the Will of James Bicknell Castle, deceased, and W. R. Castle, L. A. Thurston and A. L. Castle, Trustees under the Will and of the Estate of James Bicknell Castle, deceased, by Robertson, Castle and Olson, their attorneys, and Harold K. L. Castle by Frear, Prosser, Anderson and Marx, his attorney, as follows:

1.

That the said James Bicknell Castle died testate at Honolulu, Hawaii, on April 8, 1918.

2.

That a copy of the last Will and Testament of the said James Bicknell Castle, which was duly admitted to probate in the Circuit Court of the First Judicial Circuit, May 18, 1918, is hereto attached and made a part of this stipulation and marked Exhibit "A."

3.

That the gross value of the estate which by

said last [1*] Will and Testament was transferred to said Trustee is the sum of \$707,359.79, as more particularly set forth in Exhibit "B" hereto attached and made a part of this stipulation.

4.

That the widow of the deceased testator duly elected to take by way of dower rather than under the Will, and that there was duly set apart and transferred to the said widow by the Trustees in full settlement of her dower rights an absolute title in and to property of the estate of the value of \$237,051.83, leaving property in the hands of the said Trustees as of the date of the death of said testator of the value of \$470,307.96.

5.

That the value of the life income bequeathed to said Harold K. L. Castle, son of the testator, as of the date of the death of said testator, is the sum of \$183,165.53.

6.

That the Federal estate tax chargeable against said estate and deductible from the gross estate before the Territorial inheritance tax can be computed as nearly as the same can be ascertained at the present time, amounts to the sum of \$92,-623.17; and it is hereby stipulated and agreed by and between the parties hereto that if the amount of the said Federal estate tax shall be later increased or decreased a corresponding increase or decrease will be made in the amount of the Territorial inheritance tax as herein computed and

*Page-number appearing at foot of page of original certified Transcript of Record.

if it shall be finally determined that any such tax is due and payable such difference in the amount of said Territorial inheritance tax will be paid by the Trustees [2] to the Territory or by the Territory of the Trustees as the case may be, or the said readjustment of the amount of the said Territorial inheritance tax will be made between the Territory and such of the parties hereto as are finally determined to be liable therefor.

7.

That the total administration and other expenses, including the Federal estate tax, as presently computed, which are deductible from the value of the said estate before the Territorial inheritance tax may be computed, amount to the sum of \$153,-063.75.

8.

That the inheritance tax due on the said life income bequeathed to the said son, if any such tax be due and payable, and after making the deduction of \$5000.00 allowed by the statute amounts to the sum of \$4569.96, with interest thereon at the rate of 7% per annum from October 8th, 1919.

9.

That the value of the residuary estate for inheritance tax purposes after deducting the present value of the said life income bequeathed to the said son, amounts to the sum of \$134,078.58 and that the inheritance tax thereon, if any such tax be due and payable, amounts to the sum of \$7750.10 with interest thereon at the rate of 7% per annum from October 8th, 1919.

10.

That the value of the residuary estate for inheritance tax purposes without deducting the present value of the said life income bequeathed to the said son, amounts to the sum of \$317,244.11, if said present value is to be included, and [3] that the inheritance tax thereon, if any such tax is due and payable, amounts to the sum of \$19,655.86, with interest thereon at the rate of 7% per annum from October 8th, 1919.

Honolulu, Hawaii, April 4th, A. D. 1921.

TERRITORY OF HAWAII,

By (Sgnd.) HARRY IRWIN,

Attorney General.

W. R. CASTLE,

H. K. L. CASTLE,

Executors Under the Will of James Bicknell
Castle, Deceased.

By (Sgnd.) ROBERTSON, CASTLE,
OLSON,

Their Attorneys.

W. R. CASTLE,

L. A. THURSTON,

A. L. CASTLE,

Trustees Under the Will and of the Estate of
James Bicknell Castle, Deceased.

By (Sgnd.) ROBERTSON, CASTLE,
OLSON,

Their Attorneys.

HAROLD K. L. CASTLE,

By (Sgnd.) FREAR, PROSSER, AN-
DERSON & MARX,

His Attorneys. [4]

Exhibit "A."

WILL OF JAMES B. CASTLE. [5]

WILL OF JAMES B. CASTLE.

I, JAMES BICKNELL CASTLE, of Honolulu, in the Island of Oahu, Territory of Hawaii, being of sound and disposing mind and memory and conscious of the uncertainties of life, do hereby make, publish and declare this as and for my LAST WILL AND TESTAMENT, hereby revoking all Wills heretofore by me made, and particularly that WILL made by me on the 20th day of October, 1887.

I devise and bequeath to my wife, Julia White Castle, the estate known as Mahuilani on Haleakala, Maui. All the rest of my estate, real personal and mixed, I devise and bequeath to My EXECUTORS AND TRUSTEES hereinafter named for the following purposes:

First. For the payment of my just debts and funeral expenses.

Second. For the following uses and purposes which I will explain in some detail.

I want the business represented by the Hawaiian Development Company, Limited to go on in the same way as though I were here. The general plans of development in Kona and Koolau are very familiar to Mr. McStocker and in a broad, general way, to Mr. Withington and Mr. Thurston. I have gone into these various enterprises prepared, if

necessary for their successful establishment, to hypothecate all of my securities; but, preferably to the continued burden of heavy indebtedness, as rapidly as full value may be obtained, by selling some of my old securities, to convert the same into the new enterprises.

In line with this, it is my present intention, and in case of my decease I desire my Executors and Trustees, if in their discretion it seems best, to convert two thousand (2,000) shares of Alexander & Baldwin, Limited, stock into cash, provided it can be sold for not less than Two Hundred Dollars (\$200.00) per share, putting the same into Kona investments, preferably West Hawaii Railroad Company, and into the Koolau Railway [6] Company, either or both. After the Kona Development Company and the sugar enterprise which I have planned to mature from the Heeia Agricultural and Koolau Agricultural Companies' properties shall have become successfully established, I do not wish to expand any further in sugar, but only so far as each mill may become the central factory for the manufacture of sugar from the cane bought of small growers.

I do not bind my Executors to follow the line of development above indicated, but mean to confer upon them the widest discretion as to investment and development.

I hope before many years that franchises of such character may be obtained for both the Koolau Railway Company and the West Hawaii Railroad Company as will simultaneously give to such com-

panies the largest command both of all the resources available for financing the same, and of protecting the public interests by turning back to the State all the receipts in excess of such interest upon the actual cash invested in the enterprise as may be agreed upon as reasonable. My thought is that such excess would seldom, if ever, be returnable in cash, but in the form of better railroad facilities and equipment, all pointing toward the establishment of an ideal railroad and service to the community in which the railroad is built, and so far as possible such excess as can be foreseen in cash should be utilized in the directions indicated. These companies enabled to own or lease land without limit, should logically become the finest possible agencies for a wise immigration and homesteading by the re-distribution of such lands along the lines of the road. For the carrying out of these general purposes, including in the case of the Koolau Railway, its extension to Honolulu, provided my Executors are satisfied of the ultimate financial soundness of such extension, I wish to empower them completely to deal with any and all securities which I may possess, and otherwise, so far as lies within their power to finance such enterprises as I would have the power to do were I living.

My general aim in this whole matter is not to accumulate a great estate for my family or heirs beyond conserving the estate which I now possess and which may be conservatively valued as worth between a million and a millon and a half, [7]

but to devote any increase thereof to the purposes hereinafter indicated.

I desire my Executors to appropriate Fifteen Hundred Dollars (\$1500) a month to my widow, that being about the amount necessary to maintain Kainalu, Mahuilani and Puuokoa, Tantalus, if she so desires; that is to say, I desire to have nothing less than this paid to my widow for that purpose, or, if she desires, to apply to her other uses, so long as embarrassing financial conditions do not prevent. Subject to the like qualification that is, so long as such would not shorten the above-named Fifteen Hundred Dollars (\$1500.00) a month being paid to my widow, I desire to continue the payments which I now am making to an old friend and teacher in New York, Mrs. H. K. Hovey, whose present address is No. 7 West 108th Street, New York, Two Hundred Dollars (\$200.00) quarterly; and I desire to pay to Dr. T. M. Coan, present address 70 Fifth Avenue, New York City, One Hundred and Fifty Dollars (\$150.00) quarterly, for as long as each lives. I desire to assist Dr. N. B. Emerson in his literary work to such extent as may be necessary, not to exceed Six Hundred Dollars (\$600.00) a year during his life.

With the successful and profitable establishment, however, of the various enterprises involved, with the requisite income subsequent thereon, I desire to have the amount paid to my widow out of the Estate from its income increased to a sum not to exceed Forty Thousand Dollars (\$40,000.00) per annum.

Upon the decease of my wife, Julia White Castle, I desire to continue an income to my son H. K. L. Castle, subject to the following conditions: The minimum not to be less than Five Thousand Dollars, (\$5,000.00) per annum unless caused by financial embarrassment or inconvenience, (of which the Trustees shall be the absolute judges); the maximum not to exceed Forty Thousand Dollars (\$40,000.00) per annum, which Forty Thousand Dollars (\$40,000.00) shall include the income which he may be receiving from any property which I may give him prior to my decease, including the income from the One Thousand (1,000) shares of stock in Alexander & Baldwin, Limited, herein mentioned, together with that derived from property derived from his mother. [8]

Should the development of the Estate be such as to justify the expansion into other or related lines of business than those already initiated, of which condition my Executors, or a majority thereof, are fully empowered, without qualification, to decide, and its expansion through establishment of other enterprises in harmony with the ultimate object of my remaining in active business, namely, to accumulate sufficient land and capital to systematically establish an effort to introduce a high-class agricultural immigration of Northern races, preferably Scandinavian, Anglo-Saxon and Teutonic, then I desire them to expand into such enterprises without hesitation and I hereby empower them amply herein for the purpose.

I have promised my son Harold that if he made

himself a perfect success as a business man I would give him on his birthday on July 3d, 1912, One Thousand (1,000) shares of my Alexander & Baldwin stock, if I then possess the same, free and unencumbered. It was distinctly understood that I did not intend, in the meantime, to set aside or reserve this from any of my business operations whenever I should choose to utilize the same. In case of my decease, I desire my Executors, under the conditions set forth in this Will, to transfer to my said son, if living, the One Thousand (1,000) shares before-referred to. I desire that the certificate of his "perfect success as a business man" shall be his employment by Alexander & Baldwin, Limited, from September 3d, 1907, on which date he entered its service, uninterruptedly by any cause which he could reasonably control, to July 3d, 1912, aforesaid, to the complete satisfaction of its Manager and Board of Directors, unless his departure therefrom during such period shall be for the purpose of resuming and completing such college training, whether general or special, as he may become convinced of the need and value of as adequate preparation for his business and life work, such departure to be due in no degree to dissatisfaction of Alexander & Baldwin management with his services, and such resumption of College work to be with the cordial approval of J. P. Cooke or his successor as Manager of Alexander & Baldwin, Limited.

After the fulfillment of the requirements upon the estate as above set forth, I desire to have any

excess of income, and [9] after the decease of my said wife and son and said other beneficiaries before named, the whole income, (always subject to the decision of the Executors to devote same to any business enterprises whatsoever which they may approve), to accumulate toward an educational purpose to be initiated at such time as their judgment will determine the estate amply able to carry on without closing its commercial character. My strong desire in connection therewith will, I hope, be made clear by the following statement:

I believe that individuals, communities and nations are depraved and weakened by the excessive accumulation of wealth whenever the character has not become so permeated with a moral force and enthusiasm, as well as habits of a simpler life than that universally consonant with wealth, that the power represented by such wealth remains nothing more than an instrumentality for promoting moral and intellectual enlightenment of the race.

I believe that history shows that the ages of luxury furnish the fertile soil for national decay and that this is the operation of an inevitable law, true alike of the individual and community units composing the nation as of the whole.

I believe that the counteraction of this influence must be accomplished through some channel of education, if at all, and to my observation the injurious influence of unearned comforts is everywhere visible, the schools and colleges not excepted. The problem hereby set to education, as it seems

to me, is how may we provide, (or approximate provision for the children of the well-to-do), that training which necessity provides for the children of the poor. I believe that nothing can completely take the place, as one of the most important factors in the development of character, of the habits of work and duty which necessity provides for the large majority.

The nearest approach that I have been able to think of for this training, could be furnished by a boarding school, as it seems to me, in which the students and scholars would constitute an absolute democracy as among themselves, with special privileges to none; and it has long been my dream to establish such a school. It would be dominantly an agricultural school, which at once also certifies that it would be located [10] in the country. It would be exclusively a boarding school and not a day school. Its pupils in my conception of what would be most desirable would not return to their homes from the beginning to the end, say, approximately ten months of the usual school year, and I can easily imagine, without being able to elaborate and describe, the development of such a school into a home and family school of the nature that would easily command most of its pupils uninterruptedly for several years. It would be co-educational, the injurious influences of wealth telling, if possible, more fatally against the ought-to-be mothers of the race than the fathers.

The central principle of such a school would be the fact that every student therein would be obliged

to earn a certain definite proportion of his or her training and education. That proportion of each child's time would be employed therefor as would be productive for his or her own best good consonant with a wholesome percentage of play, albeit with sports never made the dominant, overwhelming passion that appears to be the case with the colleges, and accompanied by a regime of study contrasting with that universal in the schools preparatory to the colleges and universities by the paucity of branches simultaneously required, it being my thought in connection with the book work done in the schools that it errs very seriously upon the side of quantity rather than quality, and that fewer branches more slowly and thoroughly taught and the allied subjects suggested in the course of such studies more freely followed out therewith, presents a truer and a wholesomer scheme of mental training, the present being as herein suggested, overbalanced.

Such school would become a productive, large farm and I believe that every boy, and especially in a country like this which in its nature must always be dominantly agricultural, should be thoroughly trained as an intelligent agriculturist early in life, and that every girl should be trained in domestic science, so-called. I know of no place where this can be so thoroughly accomplished for both classes, debarring neither from all the opportunities of the other, as in such a farm-school.

Such a school should be run as a farm, with the best ability that can be secured for such a pur-

pose, and the endowment of [11] the school should be calculated to meet the deficit after full value has been credited for the products delivered to market, minus the credits paid the students for work, and the total expenses.

The total expense of such an institution eventually should determine the cost of the education and training to be received by the boys and girls, and from such total would be deducted in each scholastic year the value of their work which should be credited to them regularly, operating to reduce the cost of their school year. I believe that such a school could be established and an enthusiastic interest and ambition be instilled after a few years' experience in dealing with the problems which would arise. The initial tuition payable should be made nominal. The greatest ethical value in the education of character would, I think, develop inevitably under such a system and the conditions of admission would not depend at all upon wealthy parentage but rather the reverse.

I do not wish to impose upon the Executors in establishing and managing any such school the slightest requirement or condition distinctively religious. It is my desire neither to exact nor require, nor debar such observances. I should wish the school at least to be absolutely non-sectarian and non-denominational, my preference being that it should not be a distinctively religious school, although I am keenly appreciative of the beauty and fine influence of organ and religious music in a beautiful chapel. I believe that in conjunction with

the methods herein suggested a strong moral sense can be scientifically developed and almost created. This I conceive of as, in its final perfection of character, epitomizing into two words; unselfishness, which, perhaps, is all-embracing, but to which I add the Love of one's fellow-man, as the inspiring motive and thought in life.

I believe in such a school that the process for developing this trait could be systematically and successfully established. This process is almost totally lacking in families of the wealthy and no amount of admonition or precept can, it seems to me, impregnate the growing child with its fruit. It represents itself to my mind as occupying two stages of development, (it being recognized by the child, even though but theoretically, that the highest aim in life and growth is to do as [12] much good and to confer as much happiness upon one's fellow creatures as possible), the first stage consisting of the cultivation of the powers of accomplishment through work and training until the point is reached where one becomes entirely self-dependent, (incidentally, perhaps, this is a sense to which *independence* might wholesomely be altogether restricted), in order to relieve all others in every respect from one's own dependence; and the second stage, to continue such process of development of the powers of accomplishment through work and training so as to acquire as great a capacity as possible in order, from the excess over one's own necessities so acquired, to bless and help one's fellows.

Kainalu has been willed to me by Mrs. Castle in a

codicil dated June 12, 1900, to her Will dated October 20th, 1897. I have many times keenly regretted putting the very large amount of money that is there invested in a home for a very small family. Furthermore I am very strongly convinced that it represents a home of conditions of luxury decidedly prejudicial to the growth of that type of character which I have tried to suggest a favorable school for the attainment of. For a long time I have looked forward to its use eventually in some direction which I felt would be more appropriate, considering the expenditures therein and therefor.

The most practicable and feasible of these, I believe, to be eventually in connection with a large hotel, whenever passenger facilities between the Islands and the Mainland shall have become so rapid, frequent and comfortable as to bring travelers here in sufficient number to render the development of this place profitable in such connection. Failing this, but not advising my Executors positively in either direction, I have thought that it might some day be fitly made a library and art museum, possibly in connection with Oahu College. I do not feel that I am conferring on Harold anything but a real benefit to himself, or more particularly for the training of his family, whenever he shall have one, in diverting this property from its use as his home, believing that he would eventually, if not now, agree with me that a quiet and modest home, with his children brought up to work and not to be waited on perpetually by servants, is the truer life for civilized man and woman. [13]

In this connection I desire that my Executors and Trustees, whenever he may marry, shall, whenever he and his wife shall have selected their location for a home, pay an amount toward the same to his wife for such purpose, not to exceed \$10,000.00 (Ten Thousand Dollars), unless this contingency shall have already occurred prior to my decease, in which case this clause is to be void.

I hope that my widow and Harold, in case of my decease, will become warmly interested in the carrying on and eventual success of these plans or dreams and coöperate to the best of their ability; and I believe that the suggestions of both, particularly of Mrs. Castle, would be very valuable.

I hereby declare that nothing herein contained shall be construed to require my Executors and Trustees to engage in or carry on any of the business enterprises herein enumerated; or, if they do carry them on, nothing herein contained shall be construed as limiting their discretion in the ways and means, or the extent to which the same shall be carried on. I wish, and hereby declare that they shall have the widest discretionary powers in continuing or discontinuing said enterprises, or either of them; and in the ways, means and methods of conducting or carrying them on; and of engaging in and conducting any other business enterprise or enterprises, which they, in their discretion, may consider for the best interests of my estate.

I also more particularly give them discretion to abandon the attempt to introduce and settle emigrants of the Northern races, if, after trial thereof,

they, in their sole discretion, shall become convinced that it is impracticable or not successful enough to warrant further expenditure of money.

I hereby specifically authorize and empower my Executors and Trustees to buy, lease or otherwise acquire any property, real, personal or mixed, which, in their discretion, they may deem necessary or proper to carry into effect any of the objects or purposes herein set forth;

And, also, for like purposes, in their sole discretion to sell, convey, exchange or lease either for money, for other property, or by way of compromise, and either for cash or on credit, any property, real, personal or mixed, which may at any time belong to my estate; [14]

And, also, for like purposes, in their sole discretion, to borrow money, on behalf of my estate, either on open account, or on promissory notes as Trustees of my estate, or by pledge or mortgage, either direct or to a Trustee, of the whole or any part of my estate, and either accompanied or not accompanied by coupon bonds, upon such terms and conditions, rates of interest and time or times when payable, as to them shall seem best;

And, also, the power to invest, change investment and reinvest any moneys at any time belonging to my estate, with sole discretion as to the character of such investments;

And I hereby specially direct that my Executors and Trustees shall not be restricted in the character or class of business in which they may engage or the investments which they shall make, to those

ordinarily considered as proper investments for trust estates, but knowing my desires and objects as they do, both from the statements herein made and from my talks with them, they shall have full power and authority to carry out such desires and objects in such manner as, in their sole discretion, they may deem wise and most likely to effectuate such desires and objects, unfettered by the technicalities and control usually incident to the management of trust estates.

I hereby further direct that if, at any time or times, my Executors and Trustees shall, in their sole discretion, deem it wise to pay a special salary to anyone or more of said Executors and Trustees for the purpose of securing special service in addition to the service ordinarily expected from him or them as Executors and Trustees, in addition to the commissions which such Trustee or Trustees would legally receive, they shall have and are hereby given the authority to so employ such Trustee or Trustees and pay said salary or salaries.

I appoint as EXECUTORS AND TRUSTEES, L. A. THURSTON, F. B. McSTOCKER, and D. L. WITHINGTON, and I desire that W. R. CASTLE shall act in the absence or disability of anyone of the Executors or Trustees. I desire that, in case of the decease of anyone of said three Executors the remaining two with W. R. Castle shall appoint his successor. And I [15] authorize my said Executors and Trustees to increase their number to a number not greater than five (5) by the addition of said W. R. Castle or my son Harold K. L. Castle,

when he shall have unquestionably qualified for appointment, or by the addition of such other persons as may be selected by said Executors, said action being evident in writing, and I hope that by the time any vacancy by death shall occur, my said son will then unquestionably be qualified for appointment.

I further direct that my said Executors and Trustees be exempt from giving bond or surety for the faithful performance of their duties either as Executors or Trustees.

IN WITNESS WHEREOF, I have set my hand this 13th day of September, A. D. 1907.

(Sig.) J. B. CASTLE.

Signed, published and declared this 13th day of September, A. D. 1907, as and for his LAST WILL AND TESTAMENT by JAMES B. CASTLE in our presence, who in his presence and in the presence of each other have hereunto signed our names as witnesses.

(Sig.) HARLEAN JAMES,

Residing in Honolulu;

(Sig.) WILLIAM L. CASTLE,

Residing in Honolulu;

I, JAMES BICKNELL CASTLE, within named, hereby make, publish and declare this as a CODICIL to my before written Last Will and Testament, hereby reaffirming and republishing said Last Will and Testament in all respects excepting as herein modified, viz.:

I REVOKE the appointment of F. B. McStocker as Executor and Trustee, and also the clause in said

Will authorizing my said Executors and Trustees to increase their number, and I appoint my son, HAROLD K. L. CASTLE, as an Executor and Trustee in place of said F. B. McStocker, jointly with my other Executors therein named, with like [16] powers and exemption from giving bond or surety; my son having now become unquestionably qualified.

WITNESS my hand this 19th day of August, A. D. 1912.

(Sig.) JAMES BICKNELL CASTLE.

Signed, published and declared, this 19th day of August, A. D. 1912, as and for a CODICIL to his Last Will and Testament, and as and for the republishment of said Last Will and Testament as herein modified, by JAMES BICKNELL CASTLE, in our presence, who, in his presence and in the presence of each other, have hereto signed our names as witnesses.

(Sig.) ALBERT N. CAMPBELL,
Residing in Honolulu;

(Sig.) WILFRID A. GREENWELL,
Residing in Honolulu;

James Bicknell Castle died on the 5th day of April, 1918. His will was admitted to probate, and letters testamentary issued on May 18th, 1918, on which date William R. Castle, Harold K. L. Castle, and David L. Withington were appointed executors.

The renunciation of Harold K. L. Castle of his appointment under the will as Trustee was accepted, and William R. Castle, Lorrin A. Thurston, and David L. Withington were appointed Trustees, April 5th, 1919. [17]

Exhibit "B."**VALUE OF J. B. CASTLE ESTATE.****PERSONAL ESTATE:**

Cash on deposit.....	\$198,588.20
Cash on deposit pledged to purchase of Territorial bonds.....	20,000.00
Cash on deposit pledged to purchase of Liberty Bonds, 3d.....	30,000.00
Life Insurance.....	54,908.19
War Savings Stamps.....	832.00
Credit on Books of Hawaiian Devel- opment Co.....	No value.
Note of Kona Development Co., dated Feb. 28, 1918.....	41,838.18
Note of Kona Development Co., dated Mar. 30, 1918.....	10,911.73
Note of Oahu Shipping Co., Ltd., dated Mar. 7, 1918.....	40,000.00
Note of Thomas Wah King, dated Feb. 28, 1918.....	8,000.00
Note of Eben P. Low, dated Oct. 31, 1917.....	11,328.14
Library.....	6,000.00
Furniture.....	500.00
299 shares Kaneohe Ranch Co.....	75,000.00
399 shares Heeia Agricultural Co., Ltd.....	19,950.00
733 shares Koolau Railway Co., Ltd.	
499 shares Koolau Agricultural Co., Ltd.....	150,000.00
2677 shares Kona Agricultural Co., Ltd.....	12,000.00

63 shares Oahu Shipping Co., Ltd....	777.65
2000 shares Hawaiian Hardwood Co., Ltd.....	1,973.69
5000 shares Western Consolidated Oil Co.....	12,500.00
499 shares Hawaiian Development Co., Ltd.....	1,200.00
20 shares Oahu Country Club.....	No value
	<hr/>
	\$696,307.79

[19]

Brought forward.....\$696,307.79

FREEHOLD ESTATE:

44 acres in Manoa Valley.....	1,800.00
2.96 acres at Koolaupoko, Oahu.....	250.00
282 acres, water rights at Kaipapau, Oahu.....	1,000.00
2.4 acres at Honokua, Kona—1 share and 82 acres of another share of the Hui Aina of Honokua—4.25 acres at Waiea, So. Kona—an un- divided $\frac{2}{3}$ interest in the Ahupuaa of Waiea and 4.5 acres of land at Kalahiki, Kona Hawaii.	8,000.00

LEASEHOLD ESTATE:

A lease from the Trustees of the Es- tate of Bernice P. Bishop to James B. Castle dated Nov. 1906.....	1.00
A lease of certain lands situate in the district of North Kona, Hawaii..	1.00
	<hr/>

\$707,359.79

[Indorsement]: P. No. 5383. 4/247. Circuit Court, First Circuit Territory of Hawaii. In Probate. At Chambers. In the Matter of the Assessment of the Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Motion and Stipulation. Filed at 11 o'clock A. M., April 9, 1921. (Sgnd.) B. N. Kahalepuna, Clerk. Robertson, Castle & Olson, Frear, Prosser, Anderson & Marx and Harry Irwin, Atty. General. [20]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

IN PROBATE—AT CHAMBERS.

No. 5383.

In the Matter of the Assessment of the Interitance
Tax of the Estate of JAMES BICKNELL
CASTLE, Deceased.

**Motion for Order Assessing and Fixing Value of
Devises and Bequests and the Amount of Tax
to Which the Same are Liable.**

To the Honorable, the Presiding Judge of the Circuit Court of the First Judicial Circuit, Territory of Hawaii, in Probate, at Chambers:

Comes now the Territory of Hawaii, by Harry Irwin, Attorney General, and moves the Court that an order be entered in this Court and cause assessing and fixing the value of the devises, bequests and other interests passing under the Will of James Bicknell Castle, deceased, and the inheritance tax

to which the same are liable, pursuant to the provisions of Chapter 96 of the Revised Laws of Hawaii, 1915, as amended, and pursuant to the decree of the Supreme Court of the Territory of Hawaii, dated September 10, 1919 (Supreme Court No. 1186), and heretofore filed in this Court and cause.

This motion is based upon all the papers, files, petitions and records in this Court and cause and upon the stipulation of the parties hereto which is hereto attached and made a part hereof.

Dated, Honolulu, Hawaii, April 9, A. D. 1921.

TERRITORY OF HAWAII.

By (Sgnd.) HARRY IRWIN,
HARRY IRWIN,
Attorney General. [21]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

IN PROBATE—AT CHAMBERS.

No. 5383.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Answer of Respondent Harold K. L. Castle to Motion of Territory of Hawaii for Order Assessing and Fixing Value of Devises and Bequests and the Amount of Tax to Which the Same are Liable.

Comes now Harold K. L. Castle, by his attorneys,

Frear, Prosser, Anderson & Marx, and for answer to the above-described motion of the Territory of Hawaii represents and alleges that no inheritance tax is due to the Territory of Hawaii from him on the life income bequeathed to him by the will of the above-named James Bicknell Castle, deceased, under and pursuant to the decree of the Supreme Court of the Territory of Hawaii dated September 10, 1919, heretofore filed in this court and cause.

Dated Honolulu, Hawaii, April 12, 1921.

HAROLD K. L. CASTLE,

By (Sgnd.) FREAR, PROSSER, ANDER-
SON & MARX,

His Attorneys.

[Indorsement]: No. 5383. Reg.—, Pg. —. Circuit Court, First Circuit, Territory of Hawaii. In the Matter of the Assessment of the Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Answer. Filed April 12, 1921 at 1:25 P. M. (Sgnd.) B. N. Kahalepuna, Clerk. Frear, Prosser, Anderson & Marx, 507 Stangenwald Building, Honolulu, Attorneys for Harold K. L. Castle.
[22]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

IN PROBATE—AT CHAMBERS.

No. 5383.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES B. CASTLE,
Deceased.

Answer of Executors and Trustees.

MOTION FOR ORDER ASSESSING AND FIX-
ING VALUE OF DEVISES AND BE-
QUESTS AND THE AMOUNT OF TAX TO
WHICH THE SAME ARE LIABLE.

COMES now the Executors under the Will of James Bicknell Castle, late of Honolulu, deceased, namely, W. R. Castle and Harold K. L. Castle, and the Trustees under said will, namely, W. R. Castle, L. A. Thurston and Alfred L. Castle, by their attorneys, Robertson, Castle & Olsen, and for answer to the motion for an order assessing and fixing the values of devises and bequests under said will, and the amount of tax to which the same are liable, deny that either the said Executors, the said Trustees or the estate of said James Bicknell Castle are liable for any tax at all, and allege that the tax on the life income bequeathed to Harold K. L. Castle, if any such is payable, is payable by the said Harold K. L. Castle, that there is no tax due on the dower interest, and that the rest and residue of the estate is not liable to any

tax under the provisions of Section 1324 Revised Laws of Hawaii, 1915.

W. R. CASTLE and
HAROLD K. L. CASTLE,
Executors Under the Will of James Bicknell
Castle, Deceased, and

W. R. CASTLE,
L. A. THURSTON and
ALFRED L. CASTLE,
Trustees Under Said Will.

By (Sgnd.) ROBERTSON, CASTLE,
OLSEN,

Their Attorneys.

Dated Honolulu, April 12th, 1921.

Service by copy is hereby admitted this 12th day
of April, 1921.

(Sgnd.) HARRY IRWIN,
Attorney General. [23]

(Sgnd.) FREAR, PROSSER, ANDER-
SON & MARX,

Attorneys for H. K. L. Castle.

[Indorsement]: P. No. 5383. Circuit Court,
First Circuit, Territory of Hawaii. In the Matter
of the Assessment of the Inheritance Tax on the
Estate of James Bicknell Castle, Deceased.
Answer of Executors and Trustees. Filed
at 11:35 A. M. April 12, 1921. (Sgnd.)
B. N. Kahalepuna, Clerk. Robertson, Castle &
Olsen, 125 Merchant St., Honolulu, Attorneys for
Executors and Trustees. [24]

Tuesday, April 12, 1921.

Court Convened at Chambers at 2 o'clock P. M.

Present: Hon. JAMES J. BANKS, Third
Judge Presiding, WILLIAM HOOPAI, Clerk.

P. 5383.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Hearing.

Granted.

MOTION FOR ORDER ASSESSING AND FIX-
ING VALUE OF DEVISES AND BE-
QUESTS AND THE AMOUNT OF TAX TO
WHICH THE SAME ARE LIABLE.

HARRY IRWIN, Esq., Attorney for Territory.

A. L. CASTLE, Esq., Attorney for James B.
Castle Est.

R. B. ANDERSON, Esq., Attorney for Harold
K. L. Castle.

After statements and arguments of respective
counsel, the Court granted motion, decision to be
filed later.

* * * * *

At 2 o'clock P. M. the Court took a recess at
Chambers.

By order of the Court:

(Sgnd.) WILLIAM HOOPAI,

Clerk. [25]

Wednesday, April 20th, 1921.

At Chambers—2 o'clock P. M. Present: Hon.
JAMES J. BANKS, Third Judge Presiding;
WILLIAM HOOPAI, Clerk.

P. 5383.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Decision—Decree.

Filed.

HARRY IRWIN, Esq., Attorney for Territory.
A. L. CASTLE, Esq., Attorney for James B. Castle.
R. B. ANDERSON, Esq., Attorney for Harold
K. L. Castle.

The Court this day rendered its decision in writing and signed the decree directing payment of tax.

At 2:00 o'clock the Court took a recess at Chambers.

By order of the Court:

(Sgnd.) WILLIAM HOOPAI,
Clerk. [26]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

IN PROBATE—AT CHAMBERS.

No. 5383.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Decree Directing Payment of Tax.

Upon the motion of the Attorney General of Hawaii, heretofore filed herein on the 9th day of April, 1921, the answers of the executors and trustees and of Harold K. L. Castle, the stipulation of all parties in interest filed herein on the 9th day of April, 1921, and the decision and order entered in this court and cause on the 20th day of April, 1921, fixing the tax upon the transfer of the property of the above named decedent,

It is ORDERED AND DECREED that W. R. Castle and Harold K. L. Castle, as the Executors under the Will of James Bicknell Castle, deceased, and W. R. Castle, L. A. Thurston and A. L. Castle as Trustees under the Will and of the Estate of James Bicknell Castle, deceased, make payment forthwith to the Treasurer of the Territory of Hawaii of the sum of \$19,655.86, being the amount of tax upon the value of the estate transferred to the said Trustees by the Will of the said Testator, together with interest thereon at the rate of 7% per annum from October 8, 1919.

Honolulu, Hawaii, April 20, 1921.

(Sgnd.) JAS. J. BANKS,

Third Judge of the Circuit Court of the
First Judicial Circuit. [27]

Approved as to form.

(Sgnd.) ROBERTSON, CASTLE, OL-
SON,

Attorneys for Executors and Trustees.

(Sgnd.) FREAR, PROSSER, ANDER-
SON & MARX,

Attorneys for Harold K. L. Castle.

(Sgnd.) HARRY IRWIN,

Attorney General of Hawaii.

[Indorsement]: Circuit Court, First Circuit,
Territory of Hawaii. In Probate—At Chambers.
No. 5383. In the Matter of the Assessment of the
Inheritance Tax on the Estate of James Bicknell
Castle, Deceased. Decision and Decree. Filed at
1:45 o'clock P. M. April 20, 1921. B. N. Kahale-
puna, Clerk. Office of Attorney General, Territory
of Hawaii, Honolulu, T. H. [28]

In the Circuit Court of the First Judicial Circuit,
Territory of Hawaii.

IN PROBATE—AT CHAMBERS.

No. 5383.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

**Decision on Motion of Territory of Hawaii for
Order Assessing and Fixing the Value of
Devises and Bequests and the Amount of Tax
to Which the Same are Liable.**

This matter coming on to be heard on the 12th day of April, 1921, upon the motion of the Territory of Hawaii for an order assessing and fixing the value of devises and bequests under the Will of James Bicknell Castle, deceased, and the amount of tax to which the same are liable, upon the answers of the Executors and Trustees under the Will of said Testator and of Harold K. L. Castle, and upon the stipulation of all the parties in interest in this matter, all on file herein, and it appearing therefrom that the residuary clause of the Will of the said Testator transferred the entire estate (with the exception of that part of the estate known as Mahuilani) to the executors and trustees, whose names appear in and who are parties to said stipulation, and it further appearing from said stipulation that the value of the property so transferred to the said executors and trustees by the said residuary clause of the said Will, after making all proper and necessary deductions therefrom amounts to the sum of \$317,244.11; and it further appearing from the decree of the Supreme Court of the Territory of Hawaii, dated September 10, 1919, heretofore filed in this Court and Cause and referred to in said motion, that no inheritance tax is due to the [29] Territory of Hawaii from said Harold K. L. Castle on the life interest bequeathed to him

by said Will, but that the inheritance tax on all of said residuary estate should be paid to the Territory of Hawaii by said executors and trustees.

It is therefore ORDERED AND ADJUDGED that the cash value of the property so transferred to the said executors and trustees by the terms of the said Will, the transfer of which is subject to the tax imposed by Chapter 95 of the Revised Laws of Hawaii, 1915, as amended by Act 223 of the Session Laws of 1917, is the sum of \$317,244.11, and that the tax to which the said transfer is liable and which should be paid by said Executors and Trustees amounts to the sum of \$19,655.86, with interest thereon at the rate of 7% per annum from October 8, 1919.

Honolulu, Hawaii, April 22, 1921.

(Sgnd.) JAS. J. BANKS, (Seal)

Third Judge of the Circuit Court of the First
Judicial Circuit. [30]

In the Supreme Court of the Territory of Hawaii.
OCTOBER TERM, 1918.

In the Matter of the Estate of JAMES BICK-
NELL CASTLE, Deceased.

No. 1179.

In the Matter of the Assessment of the Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

No. 1186.

Appeals from Circuit Judge, First Circuit. Hon.

W. H. HEEN, Judge.

Argued August 26, 1919. Decided September 6, 1919.

KEMP and EDINGS, JJ., and Circuit Judge
DeBOLT in Place of COKE, C. J., Absent.

Taxation—Inheritance tax—Dower.

The estate which a widow takes in the property of her deceased husband as her dower does not pass to her by virtue of the intestate laws and is not subject to the inheritance tax which is chargeable only upon property which shall pass by will or by the intestate laws of this Territory.

Same—Same—Charitable and educational trusts.

A devise to trustees in order to be exempt from an inheritance tax as being for or to be devoted to a charitable or educational purpose must be by the terms of the will given up wholly to such charitable or educational purpose. [31]

Same—Same—Annuity.

Where an estate is devised to trustees and such trustees are charged with the duty of paying out of such estate certain annuities, the annuities as such are not subject to the inheritance tax. [32]

Opinion of the Court by Kemp, J.

James Bicknell Castle, late of Honolulu, died on April 8, 1918, leaving a will made in September, 1907, which was admitted to probate on May 18,

1918, by which he disposed of his estate. On April 21, 1919, during the pendency of proceedings for the approval of the final accounts of the executors, the attorney general, on behalf of the Territory of Hawaii, intervened and moved for the appointment of appraisers of the estate for inheritance tax purposes, to the end that the inheritance tax due upon (a) the dower estate passing to the widow, (b) the estate transferred to the trustees, and (c) the life income passing to the son, Harold K. L. Castle, might be definitely ascertained. When the said motion was presented to the probate court having jurisdiction of the cause it was suggested by counsel that as a preliminary to the granting of the motion for the appointment of appraisers it should first be decided by the Court whether any tax was due and payable from any person or persons upon any part of the estate transferred by said will or otherwise. Of course if it should be decided that no tax is due there would be no necessity for the appointment of appraisers and the motion presented by the attorney general would necessarily have to be denied. This procedure was agreed to by all parties and the question as to whether any tax is due from either the widow, the son, or the trustees, was argued and presented to the probate court. The probate judge ruled (a) that no tax was due upon that portion of the estate which passed to the widow by way of dower, she having duly elected to take by way of dower rather than under the will, (b) that no tax was due upon the *corpus* of the estate which by the will was transferred to the

trustees for the reason that the will created a valid, charitable trust and conveyed the remainder of the estate [33] to the trustees for the purpose of carrying out the terms of the charitable trust, and (c) that a tax was due upon the life income which under the will was transferred to Harold K. L. Castle, the son. The probate judge allowed the Territory an interlocutory appeal from the first two rulings and allowed Harold K. L. Castle, the son, an interlocutory appeal from the last ruling as above set forth.

At the hearing on appeal the attorney general has confessed error in the ruling of the circuit judge to the effect that the annuity to Harold K. L. Castle is subject to a tax to be paid out of said annuity. In this we concur and in line with the holding of *Estate of Brown*, 24 Haw. 443, hold that as the residuary clause of the will transfers the entire estate (with the exception of the estate known as Mahuilani on Haleakala, Maui, which is devised to Julia White Castle), to the executors and trustees, the inheritance tax (if any is due) must be paid by the executors and trustees out of the *corpus* of the estate. The residuary clause of the will is in part as follows:

“All the rest of my estate, real, personal and mixed, I devise and bequeath to my executors and trustees hereinafter named, for the following purposes:

“First. For the payment of my just debts and funeral expenses.

“Second. For the following uses and purposes which I will explain in some detail.

“I want the business represented by the Hawaiian Development Company, Limited, to go on in the same way as though I were here. The general plans of development in Kona and Koolau are very familiar to Mr. McStocker and in a broad, general way, to Mr. Withington and Mr. Thurston. I have gone into these various enterprises prepared, if necessary for their successful establishment, to hypothecate all of my securities; but, preferably to the continued burden of heavy indebtedness, as rapidly as full value may be obtained, by selling some of my old securities, to convert the same into the new enterprises.

“In line with this, it is my present intention, and in case of my decease I desire my executors and trustees, if in their discretion it seem best, to convert two thousand (2,000) shares of Alexander & Baldwin, Limited, stock into cash, provided it can be sold for not less than two hundred dollars (\$200.00) per share, putting the same into Kona investments, preferably West Hawaii Railroad Company, and into the Koolau Railway Company, [34] either or both. After the Kona Development Company and the sugar enterprise which I have planned to mature from the Heeia Agricultural and Koolau Companies' properties shall have become successfully established, I do not wish to expand any further in sugar, but only so far

as each mill may become the central factory for the manufacture of sugar from the cane bought of small growers.

“I do not bind my executors to follow the line of development above indicated, but mean to confer upon them the widest discretion as to investment and development. * * *

“My general aim in this whole matter is not to accumulate a great estate for my family or heirs beyond conserving the estate which I now possess and which may be conservatively valued as worth between a million and a million and a half, but to devote any increase thereof to the purposes hereinafter indicated.

“I desire my executors to appropriate fifteen hundred dollars (\$1500) a month to my widow, that being about the amount necessary to maintain Kainalu, Mahuilani and Puuokoa, Tantalus, if she so desires: that is to say, I desire to have nothing less than this paid to my widow for that purpose, or, if she desires, to apply to her other uses, so long as embarrassing financial conditions do not prevent. Subject to the like qualification, that is, so long as such would not shorten the above named fifteen hundred dollars (\$1500.00) a month being paid to my widow, I desire to continue the payments which I now am making to an old friend and teacher in New York, Mrs. H. K. Hovey, whose present address is No. 7 West 108th Street, New York, two hundred dollars (~~4200.00~~) quarterly; and I desire to pay to Dr. T. M. Coan, present ad-

dress 70 Fifth Avenue, New York City, one hundred and fifty dollars (\$150.00) quarterly, for as long as each lives. I desire to assist Dr. N. B. Emerson in his literary work to such extent as may be necessary, not to exceed six hundred dollars (\$600.00) a year during his life.

“With the successful and profitable establishment, however of the various enterprises involved, with the requisite income subsequent thereon, I desire to have the amount paid to my widow out of the estate from its income increased to a sum not to exceed forty thousand dollars (\$40,000.00) per annum.

“Upon the decease of my wife, Julia White Castle, I desire to continue an income to my son H. K. L. Castle, subject to the following conditions: The minimum not to be less than five thousand dollars (\$5,000.00) per annum unless caused by financial embarrassment or inconvenience (of which the trustees shall be the absolute judges); the maximum not to exceed forty thousand dollars (\$40,000.00) per annum, which forty thousand dollars (\$40,000.00) shall include the income which he may be receiving from any property which I may give him prior to my decease, including the income from the one thousand (1,000) shares of stock in Alexander & Baldwin, Limited, herein mentioned, together with that derived from property derived from his mother.

“Should the development of the estate be

such as to justify the expansion into other or related lines of business than those already initiated, of which condition my executors, or a majority thereof, are fully empowered, without qualification, to decide, and its expansion through establishment of other enterprises in harmony with the ultimate object of my remaining in active business, namely, to accumulate sufficient land and capital to systematically establish an effort to introduce a high-class agricultural immigration of northern races, preferably Scandinavian, Anglo-Saxon and Teutonic, then I desire them to expand into such enterprises without hesitation and I hereby empower them amply herein for the purpose. * * * [35]

“After the fulfillment of the requirements upon the estate as above set forth, I desire to have any excess of income, and after the decease of my said wife and son and said other beneficiaries before named, the whole income (always subject to the decision of the executors to devote same to any business enterprises whatsoever which they may approve) to accumulate toward an educational purpose to be initiated at such time as their judgment will determine the estate amply able to carry on without closing its commercial character.”

What the testator terms his strong desire as to the nature of the work he hopes to have such school accomplish is set forth in a lengthy statement in which, after expressing the belief that individuals, com-

munities and nations are depraved and weakened by the excessive accumulation of wealth and that luxury furnishes fertile soil for their decay, he expresses the further belief that the counteraction of this influence must be accomplished, if at all, through some method of education different from that employed by established schools. The problem which he desires such school to solve is, how may provision be made for the children of the well-to-do to receive that training in the habits of work and duty which necessity provides for the children of the poor? He suggests to his trustees that in order to accomplish this end the school should be a co-educational, agricultural and domestic science school located in the country; that it should be exclusively a boarding school and not a day school; that every student should be obliged to earn a certain definite proportion of his or her training and education; that the tuition charged should be nominal, the school to become a productive farm, and the endowment calculated to meet the deficit after full value has been credited for the products of such farm.

Under our statute all property which shall pass by will or by the intestate laws of this Territory from any person who may die seized or possessed of the same while a resident of this Territory is subject to the interitance tax. Chapter 96, R. L. 1915. It is provided, however, in said chapter that "All property [36] transferred * * * to any person, society, corporation, institutions, or associations of persons in trust for or to be devoted to any charitable, benevolent, educational, or public pur-

pose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property, or to the income thereof, shall be exempt from this tax" (sec. 1324).

It is claimed by the executors and trustees, and disputed by the attorney general, that the devise to them creates a trust for or to be devoted to an educational purpose and is therefore exempt, under the section above quoted, from the payment of the tax.

Julia White Castle, the widow of the testator, waived the provision made for her in the will and elected to take her dower, and the attorney general claims for the Territory the tax upon the dower which is disputed by the widow.

Our statutory dower is not the ordinary common law dower which was limited to a part of the real estate in which the husband had during the marriage an estate of inheritance, but is by the statute extended to include leasehold and freehold estates so held by the husband during the marriage and is also extended by the statute so as to give the wife "by way of dower" an absolute property in one-third part of all her husband's movable effects in possession or reducible to possession at the time of his death after the payment of all his just debts. Sec. 2977, R. L. 1915.

In order to determine whether the estate which the widow is given by the above statute is subject to an inheritance tax it must be determined whether it passes to her upon the death of her husband by

virtue of "the intestate laws of this Territory," as there is no other expression in the inheritance tax law which could possibly make the tax apply to it. A determination of the [37] nature of the estate which the wife has in her husband's estate by virtue of this statute will aid us in the solution of this question.

In *Carter vs. Carter*, 10 Haw. 687, 694, Mr. Justice Frear, afterwards chief justice, in discussing the nature of the estate created by this section of our statute, speaking for the Court said:

"That the estate in question was intended to be a dower estate is clear, because, (1) it is not limited to cases of intestacy; (2) it is expressly said to be 'by way of dower'; (3) it is coupled in the same section and sentence with dower in real estate, of which there can be no question; (4) it is part of an article entitled 'Of Dower'; (5) this article is part of a chapter entitled 'Of Husband and Wife,' which contains three articles entitled respectively 'Marriage,' 'Of Dower,' and 'Of Divorce and Separation,' thus showing that the estate was intended to be by virtue of the marriage relation, as a marital right, and not an estate of inheritance which naturally belongs and is put by the statute in an entirely different category; (6) the history of the law confirms this view, for when first passed in 1846, four years before the statute of descents was passed and thirteen years before the passage of the Civil

Code of which it is now a part, it was made, with the subjects of marriage and divorce, a subdivision of the chapter defining the duties of governors who then had special charge and jurisdiction over such matters while questions of descent were left to the ordinary courts, and the substance of the section in question was then part of a section under the article relating to marriage and immediately followed this section (afterwards section 1286 of the Civil Code) which defined the marital rights of the husband, and was part of a section which also defined the other marital rights of the wife (afterwards section 1287 of the Civil Code), and it there expressly described the estate as going to the wife 'in virtue of her marriage' as well as 'by way of dower' and inseparably connected it with the dower estate in real property, by having the words 'The wife shall be entitled to' in place of the words 'Every woman shall be endowed of,' found in the first part of 1299, and merely the word 'and' in place of the words 'she shall also be entitled,' found at the beginning of the latter half of the section."

The effect of this is to hold that the nature of the estate which the wife has by way of dower under this statute is the same as the common-law dower, so that anything that may be said of common-law dower is equally applicable to this estate. A dower right is an interest in real estate not subject to the testator's disposition and is therefore not a transfer of or a [38] succession to property of her hus-

band. It is property which exists inchoately during her husband's lifetime under the laws applicable to intestacy. *McDaniel vs. Byrnett*, 120 Ark. 295, 179 S. W. 491, 493.

The term "intestate laws" is found in most of the state statutes creating the special tax upon inheritance and has generally been held to include or refer to the statutes of descent and distribution, and not to statutes defining the estate which the wife has or may take by way of dower. In *re Page's Estate*, 79 N. Y. S. 382; *McDaniel vs. Byrnett*, *supra*. In *Ross on Interitance Taxation*, sec. 56, it is said: "It is true that dower had its origin and continuance by force of the law and depends upon the husband's death for its consummation. But it is quite another thing to suppose that the estate is dependent upon the law of succession or owes its existence to any such transfer as the inheritance tax statutes contemplate. Dower comes to the wife by virtue of the marriage, and the death of the husband serves only to consummate not to transmit it. The law that confers dower on the widow is not the law that appoints the inheritance property of a decedent to designated heirs."

It is true that in North Carolina and Illinois the opposite view is taken and the term "intestate laws" held to include the statute defining the estate which the wife takes by way of dower. *Corporation Commission vs. Dunn*, 174 N. C. 679; *Billings vs. The People*, 189 Ill. 472. But we think that the better reason, as well as the weight of authority, favors the view that the term does not include the dower

statute and that the wife's dower does not pass to her by virtue of the intestate laws. For further authorities in support of our view, see *Crenshaw vs. Moore*, 124 Tenn. 528, 34 L. R. A. (N. S.) 1161; *In re Bullen's Estate*, 47 Utah, 96; *Succession of Marsal*, 18 La. 211, 42 So. 778; *In re [39] Weiler's Estate*, 122 N. Y. S. 608; *In re Estate of Strahan*, 93 Neb. 828, 142 N. W. 678.

This brings us to the question of whether the devise to the executors and trustees or any part of it is subject to the tax.

The attorney general has argued that the devise violates the rule against perpetuities, but we do not deem it necessary to decide this question as we think the question of whether the devise is taxable can be adequately disposed of without so doing.

If the property transferred to them is transferred in trust for or to be devoted to a charitable or educational purpose it is, by virtue of the provisions of section 1324 above quoted, exempt from the tax. If it does not come within this exemption it is subject to the tax.

The commonly accepted meaning of the word "devoted," and as defined by Webster is, "to give up wholly." If we accept this definition of the word used in the statute the property transferred to the executors and trustees by the terms of the will must be "given up wholly" to the educational purpose defined in the will to bring it within the statutory exemption. "In the interpretation of statutes words in common use are to be construed in their natural, plain and ordinary signification. It is a

very well-settled rule that so long as the language used is unambiguous a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy; and it is the plain duty of the Court to give it force and effect." 38 Cyc. 1114.

We think that it is clear from a reading of the will that the first purpose for which the devise is made to the executors and trustees, and to accomplish which the whole income may be used, is to provide an income not to exceed forty thousand dollars [40] per annum for the testator's widow during her life and after her death to continue such income to his son H. K. L. Castle. It is true that the testator says that he wants certain railroad and development schemes in which he was interested to go on in the same way as though he were here, but he says that his aim in this respect is not to accumulate a great estate for his family or heirs beyond conserving the estate which he then possessed, but to devote any increase thereof to the purposes thereafter indicated. Immediately after this provision in the will he directs his executors to pay to his widow and after her death to his son the annuity above referred to, and next directs that, under certain conditions in harmony with the ultimate object of his remaining in active business of which his executors are to be the judges, land and capital be accumulated to systematically establish an effort to introduce into this Territory a high class agricultural immigration of northern races, preferably Scandinavian, Anglo-Saxon and Teutonic.

Following the provisions above detailed are the provisions relative to initiating the educational purpose set out in the last paragraph quoted from the will in the first part of this opinion.

It is significant that the testator directs that the accumulation for the educational purpose is to begin "after the fulfillment of the requirements upon the estate as above set forth."

It has been argued that the annuity to H. K. L. Castle may never become payable as the will provides that it is to begin after the death of his mother and she may survive him; that his mother having waived the provision made for her in the will and elected to take her dower, no part of the property transferred [41] may ever be devoted to providing such annuity. But we think the election of the widow to take her dower operated to accelerate the provision in favor of the son and to make his annuity immediately a charge upon the estate. *Lidgate vs. Danford*, 23 Haw. 317, 327; *Slocum vs. Hagaman*, 176 Ill. 533; *Trustees Church Home vs. Morris*, 99 Ky. 317; *In re Schulz's Estate*, 113 Mich. 592.

When a widow elects to take her dower instead of accepting the provisions of the will, the general rule, as announced by authorities already cited, is that the legacies which were to have been effective at her death became immediately due, unless a contrary intention of the testator is manifest. We can see nothing in the will before us which manifests such intention. The only reason we can conceive for the postponement of the annuity to the son

until the death of the widow was that she might be provided for to the full extent contemplated and when that reason for postponement ceased, as it did upon her election to take her dower, we can see no reason why the next object of the testator's bounty should be delayed in its enjoyment. It is also to be noted that since the widow elected to take her dower and thereby diminished by one-third the *corpus* of the estate, it is not improbable that the estate will be unable to pay to the son the maximum income authorized by the will and it will be only just that he be compensated for this impairment of the estate by receiving his annuity for a longer period of time.

We conclude that the devise to the executors and trustees is not to be devoted to the educational purpose in the sense in which the statute contemplates it should be to entitle it to the exemption and is therefore subject to the tax.

The ruling subjecting the annuity of H. K. L. Castle to the tax, and from which he has appealed, is reversed. The ruling that the widow's dower is not subject to the tax and the [42] ruling that the devise to the executors and trustees constitutes a charitable trust, from which rulings the Territory has appealed, are as to the first affirmed, and as to the second, reversed, and the cause remanded for further proceedings consistent with this opinion.

H. IRWIN, Attorney General, for the Territory.

A. WITHINGTON (CASTLE & WITHINGTON
on the brief), for the executors.

F. M. HATCH, for Julia White Castle and H. K. L. Castle.

(Signed) S. B. KEMP.

(Signed) W. S. EDINGS.

(Signed) J. T. DeBOLT.

[Endorsed]: No. 1179. Supreme Court, Territory of Hawaii. October Term, 1918. In the Matter of the Assessment of the Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Opinion. Filed September 6, 1919, at 10:45 A. M. Robert Parker, Jr., Assistant Clerk. [43]

In the Supreme Court of the Territory of Hawaii.
In the Matter of the Assessment of Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Application for Writ of Error.

To the Clerk of the Supreme Court:

Please issue a writ of error in the above-entitled case to the Clerk of the Circuit Court of the First Judicial Circuit, which case is No. 5383 and decree thereon entered April 20, 1921, on behalf of William R. Castle and Harold K. L. Castle, Executors under the Will of said James Bicknell Castle and William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of said James Bicknell Castle, returnable to the Supreme Court.

Dated, Honolulu, T. H., May 16th, 1921.

WILLIAM R. CASTLE and
HAROLD K. L. CASTLE,
Executors Under the Will of James Bicknell Castle.

WILLIAM R. CASTLE,
LORRIN A. THURSTON and
ALFRED L. CASTLE,
Trustees Under the Will of James Bicknell Castle.
By (Signed) ROBERTSON, CASTLE &
OLSON,

Their Attorneys.

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Application for Writ of Error. Filed May 16, 1921, at 9:20 A. M. J. A. Thompson, Clerk. Robertson, Castle & Olson, Attorneys for Plaintiffs in Error. [44]

In the Supreme Court of the Territory of Hawaii.
In the Matter of the Assessment of Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Assignments of Error (Copy).

Now come William R. Castle and Harold K. L. Castle, Executors of the Will of James Bicknell Castle, deceased, and William R. Castle, Lorrin A.

Thurston and Alfred L. Castle, trustees under the will of James Bicknell Castle, deceased, plaintiffs in error in the above-entitled cause, and say there is manifest error in the record of proceedings before the Third Judge in said First Judicial Circuit, Territory of Hawaii, to wit:

1. That it was error to render and enter the decree in said cause directing the payment by the plaintiffs in error of a tax of \$19,655.86 and interest thereon at 7% from October 8, 1919.

2. That it was error to hold the residuary bequest in said will given to said trustees was subject to a territorial inheritance tax.

3. That it was error to hold that a territorial inheritance tax upon the annuity of Harold K. L. Castle should be paid out of the residue of the estate.

WHEREFORE the said plaintiffs in error pray that for the errors aforesaid the said decree of the said Circuit Court be reversed, annulled and for naught held, and this cause be remanded to said Circuit Court with directions that said errors [45] be corrected, to the end that justice may be done in the premises.

Dated, Honolulu, T. H., May 16th, 1921.

(Signed) ROBERTSON, CASTLE &
OLSON,

Attorneys for Plaintiffs in Error.

NOTICE.

To the Territory of Hawaii, and its Attorney General; Harold K. L. Castle, and his Counsel, Frear, Prosser, Anderson & Marx:

Notice is hereby given that application has been filed with the clerk of the Supreme Court of the Territory of Hawaii for a writ of error in the above-entitled cause.

(Signed) ROBERTSON, CASTLE &
OLSON,

Attorneys for Plaintiffs in Error.

CERTIFICATE OF SERVICE.

I, Arthur Withington, hereby certify that on May 16, 1921, I served a copy of the above assignments of error and notice upon Joseph Lightfoot, deputy attorney general, and Frear, Prosser, Anderson & Marx, counsel for H. K. L. Castle, the Trustees and H. K. L. Castle being the defendants in error in the above cause.

(Signed) ARTHUR WITHINGTON,
Of Counsel for Plaintiff in Error.

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Assignments of Error. Filed May 16, 1921, at 9:20 A. M. J. A. Thompson, Clerk. Issued for Service May 16, 1921, at 10:45 A. M. J. A. Thompson, Clerk. Returned May 16, 1921, at 11:43 A. M. J. A. Thompson,

Clerk. Robertson, Castle & Olson, Attorneys for
Plaintiffs in Error. [46]

In the Supreme Court of the Territory of Hawaii.
WRIT OF ERROR.

In the Matter of the Assessment of Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Bond on Writ of Error (Copy).

KNOW ALL MEN BY THESE PRESENTS:
That we, William R. Castle and Harold K. L. Castle, Executors under the Will of James Bicknell Castle, and William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, as principals, and A. N. Campbell and F. E. Steere as sureties, are held and firmly bound unto the Territory of Hawaii and Harold K. L. Castle, jointly and severally, in the sum of Twenty Thousand Dollars (\$20,000), for the payment of which, well and truly to be made, we bind ourselves, our successors, executors and administrators, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS
AS FOLLOWS:

WHEREAS, in the above-entitled cause judgment was given against the said William R. Castle and Harold K. L. Castle, Executors under the Will of James Bicknell Castle, and William R.

Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle in favor of the Territory of Hawaii and Harold K. L. Castle; and

WHEREAS, said William R. Castle and Harold K. L. Castle, Executors under the Will of James Bicknell Castle, and William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, have petitioned that a writ of error be granted to them because of certain alleged errors in the judgment, [47] decision and errors occurring at the trial of said cause;

NOW, THEREFORE, if the said William R. Castle and Harold K. L. Castle, Executors under the Will of James Bicknell Castle, and William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, shall pay or cause to be paid the said judgment in said original cause in case they fail to sustain the said writ of error, this obligation shall be void; otherwise to be in full force and effect.

IN WITNESS WHEREOF said William R. Castle and Harold K. L. Castle, Executors under the Will of James Bicknell Castle, and William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, as principals, and A. N. Campbell and F. E. Steere,

as sureties, have set their hands this 13th day of May, 1921.

Executors under the Will of James B. Castle:

(Signed) WILLIAM R. CASTLE,

(Signed) HAROLD K. L. CASTLE,

Principals.

(Signed) WILLIAM R. CASTLE,

Trustees Under the Will of James B. Castle:

(Signed) L. A. THURSTON,

(Signed) ALFRED L. CASTLE,

Principals.

(Signed) A. N. CAMPBELL,

(Signed) F. E. STEERE,

Sureties.

[48]

Territory of Hawaii,

City and County of Honolulu,—ss.

A. N. Campbell and F. E. Steere, being severally duly sworn, each for himself deposes and says: That he is the surety named in the foregoing bond and whose name is subscribed thereto; that he has property situated within the Territory of Hawaii subject to execution, and that he is worth in property within said Territory the amount of the penalty specified in said bond over and above all his debts and liabilities.

(Signed) A. N. CAMPBELL,

(Signed) F. E. STEERE,

Subscribed and sworn to before me this 13th day of May, 1921.

[Seal] (Signed) MILLIE F. RAWLINS,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

In the above-entitled matter the amount of the bond is fixed at \$20,000, and the foregoing bond is approved.

[Seal] (Signed) JAMES L. COKE,
Chief Justice of the Supreme Court of the Terri-
tory of Hawaii.

[Endorsed]: No. 1332. Supreme Court, Terri-
tory of Hawaii. In the Matter of the Assessment
of Inheritance Tax on the Estate of James Bick-
nell Castle, Deceased. Bond on Writ of Error.
Filed May 16, 1921, at 9:20 A. M. J. A. Thomp-
son, Clerk. Robertson, Castle & Olson. [49]

In the Supreme Court of the Territory of Hawaii.
In the Matter of the Assessment of Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Writ of Error (Copy).

To the Clerk of the Circuit Court of the First Ju-
dicial Circuit, Territory of Hawaii.

Application having been made on behalf of Will-
iam R. Castle and Harold K. L. Castle, Executors
under the Will of James Bicknell Castle, and Will-

iam R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, for a writ of error in the above-entitled case, you are commanded forthwith to send to the Supreme Court the record in said case.

Witness the Honorable JAMES L. COKE, Chief Justice of the Supreme Court this 16th day of May, 1921.

[Seal] (Signed) J. A. THOMPSON,
Clerk of the Supreme Court.

Received the above writ of error on this 16th day of May, 1921, at 10:30 o'clock A. M.

(Signed) WILLIAM HOOPAI,
Clerk Circuit Court First Circuit.

To the Clerk of the Supreme Court:

The execution of the within writ of error appears by the record hereto annexed.

Dated, Honolulu, T. H., May 26, 1921.

(Signed) WILLIAM HOOPAI,
Clerk of the Circuit Court of the First Judicial
Circuit, Territory of Hawaii.

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Writ of Error. Filed May 16, 1921, at 9:30 A. M., and Issued Same. Returned May 26, 1921, at 2:35 P. M. Robert Parker, Jr., Assistant Clerk. Robertson, Castle & Olson, Attorneys for Plaintiffs in Error. [50]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1920.

In the Matter of the Assessment of Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

No. 1332.

ERROR TO CIRCUIT JUDGE, FIRST CIRCUIT.

Hon. J. J. BANKS, Judge.

Argued September 23, 1921. Decided October 1,
1921.

KEMP and EDINGS, J. J., and Circuit Judge
DeBOLT in Place of COKE, C. J., Absent.

Appeal and Error—Decree affirmed when in con-
formity with former decision.

The decree of a Circuit Judge rendered in con-
formity with a decision of this Court upon a
former appeal of the same case will be af-
firmed.

Opinion of the Court by Kemp, J.

Plaintiffs in error seek to reverse a decree of
the Circuit Judge at chambers in probate requir-
ing the executors and trustees of the estate of
James Bicknell Castle, deceased, to pay to the
treasurer of the Territory of Hawaii the sum of
\$19,655.86, being the amount of tax upon the value
of the estate transferred to said trustees by the
will of the said testator, together with interest

thereon at the rate of seven per cent per annum from October 8, 1919.

Only two questions are presented by the assignments of error: (1) Is the annuity to Harold K. L. Castle under the terms of the will a taxable transfer payable by him out of said annuity, and (2) is the transfer to the trustees a taxable transfer within the meaning of our inheritance tax statute? [51]

Both of these questions were fully considered by us when this same case was before us on an interlocutory appeal and were decided adversely to the contentions of plaintiffs in error. Our decision on that appeal is reported in 25 Haw. 108, and so fully states the facts and the law applicable thereto as to render it unnecessary for us to discuss them here.

The decree of the Circuit Judge is in conformity with that decision and must therefore be affirmed, and it is so ordered.

(Signed S. B. KEMP.

(Signed) W. S. EDINGS.

(Signed) J. T. DeBOLT.

A. WITHINGTON (ROBERTSON, CASTLE & OLSON on the brief), for plaintiffs in error.

R. B. ANDERSON (FREAR, PROSSER, ANDERSON & MARX, on the brief), for H. K. L. CASTLE, one of the defendants in error.

H. IRWIN, Attorney General, filed a brief for the Territory but did not argue.

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. October Term, 1920. In the Matter of the Assessment of Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Opinion. Filed October 1, 1921, at 9:40 A. M. J. A. Thompson, Clerk. [52]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1921.

No. 1332.

WRIT OF ERROR TO THE CIRCUIT COURT,
FIRST JUDICIAL CIRCUIT.

Hon. J. J. BANKS, Judge.

In the Matter of the Assessment of Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

Decree.

IT IS HEREBY ORDERED AND DECREED pursuant to the opinion of the above-entitled Court rendered and filed in the above-entitled matter on the 1st day of October, A. D. 1921, that the Decree of the Circuit Court in the above-entitled matter made, entered and filed on the 20th day of April, A. D. 1921, ordering the executors and trustees under the Will and of the Estate of James Bicknell Castle, deceased, to pay to the Treasurer of the Territory of Hawaii, the sum of Nineteen Thousand Six Hundred Fifty-five and 86/100 Dol-

lars (\$19,655.86), being the amount of inheritance tax upon the value of the estate transferred to said trustees by the will of the said decedent, and also ordering said executors and trustees to pay to said treasurer interest upon said sum at the rate of seven per cent (7%) per annum from and after October 8, 1919, be and the same hereby is affirmed.

Dated at Honolulu, T. H. this 5th day of October, A. D. 1921.

By the Court:

[Seal] (Signed) J. A. THOMPSON,
Clerk Supreme Court.

Approved as to form.

(Signed) ROBERTSON, CASTLE & OL-
SON,

Attys. for Ex. and Trustees Will of James B. Cas-
tle.

(Signed) HARRY IRWIN,
Atty. General.

O. K.—(Signed) KEMP.

[Endorsed]: No. 1331. Supreme Court, Terri-
tory of Hawaii. October Term, 1921. In the Mat-
ter of the Assessment of Inheritance Tax on the
Estate of James Bicknell Castle, Deceased. De-
cree. Filed October 5, 1921, at 9:20 A. M. J. A.
Thompson, Clerk. Frear, Prosser, Anderson &
Marx, 507 Stangenwald Building, Honolulu, At-
torney for H. K. L. Castle. [53]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

WILLIAM R. CASTLE, LORRIN A. THURSTON
and ALFRED L. CASTLE, Trustees Under
the Will of JAMES BICKNELL CASTLE,
Plaintiffs in Error,

vs.

H. K. L. CASTLE and TERRITORY OF HA-
WAI,II,

Defendants in Error.

**Petition for Writ of Error for the United States
Circuit Court of Appeals for the Ninth Cir-
cuit, to the Supreme Court of the Territory
of Hawaii.**

To the Honorable Chief Justice and Associate Jus-
tices of the Supreme Court of the Territory
of Hawaii.

William R. Castle, Lorrin A. Thurston and Al-
fred L. Castle, Trustees under the Will of James
B. Castle, petitioners in the above-entitled cause,
feeling themselves aggrieved by the decision and
decree in said cause affirming the decree of the
Circuit Court of the First Judicial Circuit of the
Territory of Hawaii which decree of the Supreme
Court of the Territory of Hawaii was entered on
the 5th day of October, A. D. 1921, and complaining

say that there are manifest errors to the damage of the petitioners in the same, which errors are specifically set forth in assignments of error filed herein, to which reference is hereby made; that the amount involved in said [54] suit exclusive of costs exceeds the sum or value of Five Thousand Dollars (\$5,000.00) and that it is a proper case to be reviewed by said Circuit Court of Appeals.

AND WHEREFORE your petitioners would respectfully pray that a writ of error be allowed to them in the above-entitled cause and that they be allowed to prosecute the same to the Honorable United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided; that an order be made fixing the amount of security the petitioners shall give and furnish upon said writ of error and upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit; that the Clerk of the Supreme Court of the Territory of Hawaii be directed to send to the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record, proceedings and papers in this cause duly authenticated for the correction of the errors so complained of and that a citation and supersedeas may issue.

And your petitioners will ever pray.

Dated, Honolulu, T. H., December 12, 1921.

(Signed) WILLIAM R. CASTLE,

(Signed) ALFRED L. CASTLE,

(Signed) L. A. THURSTON,

Trustees Under the Will of James Bicknell Castle.

Subscribed and sworn to before me this 22d day of December, 1921.

[Seal] (Signed) CHAS. Y. AWANA,

Notary Public First Judicial Circuit, Territory of Hawaii.

(Signed) ROBERTSON, CASTLE & OLSON,

Attorneys for Petitioners. [55]

The foregoing petition is granted, a writ of error allowed, and the amount of bond on said writ of error is fixed at \$25000.00.

Dated, December 27th, 1921.

[Seal] (Signed) S. B. KEMP,

Justice.

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased. W. R. Castle, et al., Petitioners, vs. H. K. L. Castle and Territory of Hawaii, Respondents. Petition for Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the Territory of Hawaii. Filed December 27, 1921, at 11:15 A. M. J. A. Thompson, Clerk. Robertson, Castle & Olson, Attorneys for Petitioners. [56]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

WILLIAM R. CASTLE, LORRIN A. THURSTON
and ALFRED L. CASTLE, Trustees Under
the Will of JAMES BICKNELL CASTLE,
Plaintiffs in Error,

vs.

H. K. L. CASTLE and TERRITORY OF HA-
WAI,II,

Defendants in Error.

Assignments of Error (Original).

Now come the above-named plaintiffs in error, William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, and say in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

1. That the Court erred in affirming the decree in the Circuit Court of the First Judicial Circuit of the Territory of Hawaii, dated April 20, 1921, and ordering the payment of a tax in the sum of \$19,655.86 by the Executors of the Estate of James Bicknell Castle as a transfer tax under the succession tax laws of the Territory of Hawaii.
2. That the Court erred in affirming the taxing

of that portion of the estate of James Bicknell Castle which was transferred to the Trustees for charity and for educational purposes, such a gift being exempt from succession tax by the laws of the Territory of Hawaii. [57]

3. That the Court erred in affirming the exemption from a succession tax of an annuity to a son of James Bicknell Castle of an admitted value of \$183,165.53.

4. That the Court erred in affirming a tax on the property of the estate and not upon the right of succession of those taking under the will of James Bicknell Castle.

5. That the Court erred in holding that no property passed by the will of James Bicknell Castle to his son Harold K. L. Castle.

6. That the Court erred in holding that in order to exempt charitable gifts from a succession tax all the estate of the testator must be given wholly to the charitable object.

7. The Court erred in holding that a tax in the sum of \$19,655.86 was correctly levied when the admitted value of the legacies passing to the different legatees called at the most for a tax of \$12,320.06.

8. That the Court erred in holding that the entire tax should be taxed at a uniform rate as part of it passed to a son and part to trustees for charity.

9. That the Court erred in holding that all

questions raised on the writ of error had been decided on the former appeal.

Dated, Honolulu, T. H., December 12, 1921.

ROBERTSON, CASTLE & OLSON,
Attorneys for Plaintiffs in Error. [58]

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased, William R. Castle et al., Petitioners, vs. H. K. L. Castle and Territory of Hawaii, Respondents. Assignments of Error. Filed December 27, 1921, at 11:15 A. M. J. A. Thompson, Clerk. Robertson, Castle & Olson, Attorneys for Petitioner. [59]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

WILLIAM R. CASTLE, LORRIN A. THURSTON and ALFRED L. CASTLE, Trustees
Under the Will of JAMES BICKNELL
CASTLE,

Plaintiffs in Error,

vs.

H. K. L. CASTLE and TERRITORY OF HAWAII,

Defendants in Error.

Bond on Writ of Error (Original).

KNOW ALL MEN BY THESE PRESENTS: That William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, as principals, and the Trustees of the Oahu College, a corporation, and Albert N. Campbell, as sureties, are held and firmly bound unto Harold K. L. Castle and the Territory of Hawaii in the penal sum of Twenty-five Thousand Dollars (\$25,000), for the payment of which, well and truly to be made to the said Harold K. L. Castle and Territory of Hawaii, do bind themselves and their respective successors firmly by these presents.

THE CONDITION of the above obligation is that whereas on the 27th day of December, 1921, the above bounden principals sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit from that certain decree made and entered in the above-entitled court and cause on the 5th day of October, 1921, by the Supreme Court of the Territory of Hawaii; [60]

NOW, THEREFORE, if said principals shall prosecute their said writ of error to effect and answer all damages and costs if they fail to sustain their writ of error, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF the said William R. Castle, Lorrin A. Thurston and Alfred L. Cas.

tle, Trustees under the Will of James Bicknell Castle, as principals, and said Trustees of the Aohu College and said Albert N. Campbell, as sureties, have hereunto set their hands this 27th day of December, 1921.

(Signed) WILLIAM R. CASTLE,

(Signed) ALFRED L. CASTLE,

(Signed) L. A. THURSTON,

Trustees Under the Will of James Bicknell Castle.

THE TRUSTEES OF THE OAHU COL-
LEGE,

By (Signed) C. C. COOKE,

Treasurer (Seal).

(Signed) A. N. CAMPBELL.

The foregoing bond is approved.

[Seal]

(Signed) S. B. KEMP,

Justice of the Supreme Court of the Territory of
Hawaii.

[Endorsed]: No. 1332. Supreme Court, Terri-
tory of Hawaii. In the Matter of the Assessment
of an Inheritance Tax on the Estate of James
Bicknell Castle, Deceased. William R. Castle et
als., Petitioners, vs. H. K. L. Castle and Territory
of Hawaii, Respondents. Bond on Writ of Error.
Filed December 27, 1921, at 11:45 A. M. J. A.
Thompson, Clerk. Robertson, Castle & Olson, 125
Merchant St., Honolulu. [61]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

WILLIAM R. CASTLE, LORRIN A. THURSTON and ALFRED L. CASTLE, Trustees
under the Will of JAMES BICKNELL
CASTLE,

Plaintiffs in Error,

vs.

H. K. L. CASTLE and TERRITORY OF
HAWAII,

Defendants in Error.

Praeipie for Transcript of Record on Writ of Error.

To James A. Thompson, Esq., Clerk Supreme
Court, Territory of Hawaii:

You will please prepare a transcript of record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit and include in said transcript the following pleadings, opinions, decrees and papers on file in said cause, to wit:

1. Stipulation between parties, dated April 4, 1921, and attached thereto as exhibits thereof, are the following, viz: Exhibit "A," printed copy of the Last Will and Testament of James Bicknell Castle, dated September 13, 1907, and Codicil thereto, dated August 19, 1912, and Exhibit "B,"

copy of a statement of the value of the Estate of James Bicknell Castle, filed April 9, 1921. [62]

2. Copy of motion by the Territory of Hawaii for order assessing and fixing value of devises and bequests and the amount of tax to which the same are liable, dated April 9, 1921.

3. Copy of the answer of respondent Harold K. L. Castle to the motion of the Territory of Hawaii for order assessing and fixing value of devises and bequests and the amount of tax to which the same are liable, dated and filed April 12, 1921.

4. Copy of the answer of the Executors and Trustees under the Will of James Bicknell Castle to the motion for an order assessing and fixing the value of devises and bequests and the amount of tax to which the same are liable, dated and filed April 12, 1921.

5. Copy of the Minutes of the Clerk of the Third Division of the Circuit Court of the First Circuit under dates, to wit, April 12, and 20, 1921.

6. Copy of decree of the Circuit Court, First Circuit, directing payment of tax, dated and filed April 20, 1921.

7. Copy of the decision of Hon. James J. Banks on the motion of the Territory of Hawaii for order assessing and fixing the value of devises and bequests and the amount of tax to which the same are liable, dated April 22, 1921.

8. Copy of the opinion of the Supreme Court of the Territory of Hawaii, rendered and filed September 6, 1919, in the cases respectively entitled as follows: (1) "In the Matter of the

Estate of James Bicknell Castle, Deceased," Numbered 1179, and (2) "In the Matter of the Assessment of the Inheritance Tax on the Estate of James Bicknell Castle, Deceased," Numbered 1186 (Reported in Volume 25 Hawaii Reports, pp. 108-120).

9. Copy of application for writ of error to the Circuit Judge of the First Circuit, Territory of Hawaii, dated and filed May 16, 1921.

10. Copy of assignments of error and notice of application for writ of error, dated and filed May 16, 1921.

11. Copy of bond on writ of error for \$20,000.00; William R. Castle and Harold K. L. Castle, Executors under the Will of James Bicknell Castle, Deceased, and William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, Deceased, Principals; A. N. Campbell and F. E. Steere, Sureties, and the Territory of Hawaii and Harold K. L. Castle, as Obligees, dated May 13, 1921. [63]

12. Copy of Writ of Error, dated May 16, 1921, with return noted at the end thereof.

13. Copy of the Opinion of the Supreme Court of the Territory of Hawaii, rendered and filed in the above-entitled cause on the first day of October, 1921. (Reported in Volume 26, Hawaii Reports, pp.—).

14. Copy of the Decree of the Supreme Court of the Territory of Hawaii, filed October 5, 1921.

Dated, Honolulu, T. H., December 27, 1921.

(Signed) ROBERTSON, CASTLE & OLSON,
Attorneys for Plaintiffs in Error.

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased, William R. Castle, et al., Petitioners. v. H. K. L. Castle and Territory of Hawaii, Respondents. Praecipe of Transcript of Record on Writ of Error. Filed December 27, 1921, at 11:15 A. M. J. A. Thompson, Clerk. Robertson, Castle & Olson, Attorneys for Plaintiffs in Error. [64]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

WILLIAM R. CASTLE, LORRIN A. THURSTON and ALFRED L. CASTLE, Trustees
Under the Will of JAMES BICKNELL
CASTLE,

Plaintiffs in Error,

vs.

H. K. L. CASTLE and TERRITORY OF
HAWAII,

Defendants in Error.

Writ of Error (Original).

United States of America,—ss.

The President of the United States of America to
the Honorable, the Judges of the Supreme
Court of the Territory of Hawaii, GREET-
ING:

Because in the record and in the proceedings, as

also in the rendition of judgment in said Supreme Court of the Territory of Hawaii before you, in the case of "In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased, No. 1332," a manifest error has happened to the great prejudice and damage of William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, petitioners, as is said and appears by the petition herein,—

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you [65] send the record and proceedings aforesaid with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, in the State of California, together with this writ, so as to have the same at the said place in said Circuit Court thirty days after this date, and the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein, to correct those errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, this 27th day of December, A. D. 1921.

ATTEST my hand and the seal of the Supreme Court of the Territory of Hawaii, at the clerk's office, Honolulu, Territory of Hawaii, on the day and year last above whitten.

[Seal]

J. A. THOMPSON,

Clerk of Supreme Court, Territory of Hawaii.

Allowed this 27th day of December, A. D. 1921.

[Seal]

S. B. KEMP,

Associate Justice of the Supreme Court of the Territory of Hawaii. [66]

[Endorsed]: No. 1332. In the Supreme Court of the Territory of Hawaii. In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased. William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, Plaintiffs in Error, vs. H. K. L. Castle and Territory of Hawaii, Defendants in Error. Writ of Error. Filed December 27, 1921 at 3:20 P. M. and Issued for service. J. A. Thompson, Clerk. Returned December 28, 1921, at 9:15 A. M. J. A. Thompson, Clerk. [67]

In the Supreme Court of the Territory of Hawaii.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

WILLIAM R. CASTLE, LORRIN A. THURSTON and ALFRED L. CASTLE, Trustees
Under the Will of JAMES BICKNELL
CASTLE,

Plaintiffs in Error,

vs.

H. K. L. CASTLE and TERRITORY OF
HAWAII,

Defendants in Error.

Citation on Writ of Error (Original).

United States of America,—ss.

The President of the United States of America to
Harold K. L. Castle and the Territory of
Hawaii, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, State of California, within thirty days from the date of this writ, pursuant to a writ of error filed in the Clerk's office of the Supreme Court of the Territory of Hawaii, wherein William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, are plaintiffs in error, and you are defendants in error, to show cause, if any there

may be, why judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.
[68]

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States of America, this 27th day of December, A. D. 1921.

Honolulu, December 27th, 1921.

[Seal]

S. B. KEMP,

Justice of the Supreme Court Territory of Hawaii.

Service of the within citation is hereby admitted this 27th day of December, 1921.

TERRITORY OF HAWAII.

By HARRY IRWIN,

Attorney General.

H. K. L. CASTLE,

Defendant in Error.

By FREAR, PROSSER, ANDERSON &
MARX,

His Attorneys.

ROBBINS B. ANDERSON,

Of Counsel. [69]

[Endorsed]: No. 1332. In the Supreme Court of the Territory of Hawaii. In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased. William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees Under the Will of James Bicknell Castle, Plaintiffs in Error, vs. H. K. L. Castle and Territory of Hawaii, Defendants in Error.

Citation on Writ of Error. Filed December 27, 1921 at 3:20 P. M. and Issued for Service. J. A. Thompson, Clerk. Returned December 28, 1921, at 9:15 A. M. J. A. Thompson, Clerk. [70]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1921.

No. 1332.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

**Order Extending Time to and Including February
28, 1922, for Preparation and Transmission of
Record (Copy).**

Upon the applications of William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, plaintiffs in error, and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit,—

IT IS THEREFORE ORDERED that the said William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, plaintiffs in error, and the Clerk of this Court be, and they are hereby allowed until and including the 28th day of February, 1922, within which time to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit

at San Francisco, California, the record in the above-entitled cause on assignments of error and all other papers required as part of said record.

Dated at Honolulu, T. H., this 16th day of January, 1922.

[Seal].

JAMES L. COKE,

Chief Justice of the Supreme Court of the Territory of Hawaii. [71]

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Order Extending Time for Preparation and Transmission of Record. Filed January 16, 1922, at 10:40 A. M. J. A. Thompson, Clerk Supreme Court of Hawaii. [72]

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1921.

No. 1332.

In the Matter of the Assessment of an Inheritance Tax on the Estate of JAMES BICKNELL CASTLE, Deceased.

Certificate of Clerk of Supreme Court to Transcript of Record and Return to Writ of Error.

Territory of Hawaii,
City and County of Honolulu,—ss.

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, in obedience to the within writ of error, the original whereof is herewith returned, being pages 65 to 67, both in-

clusive of the foregoing transcript, and in pursuance to the praecipe to me directed, a copy whereof is hereto attached, being pages 62 to 64, both inclusive of the foregoing transcript,—

DO HEREBY TRANSMIT to the Honorable United States Circuit Court of Appeals for the Ninth Circuit the foregoing transcript of record, being pages 1 to 30, both inclusive, pages 44 to 56, both inclusive, and pages 60 to 61, both inclusive, and I certify the same to be full, true and correct copies of the pleadings, records, entries and final decree which are now on file and of record in the office of the Clerk of the Supreme Court of the Territory of Hawaii, in a cause entitled in said Court, “In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased,” Numbered 1332.

I FURTHER CERTIFY that pages 31 to 43, both inclusive, of the foregoing transcript of record, is a full true and correct copy of the opinion of the Supreme Court of the Territory of Hawaii, rendered and filed on the 6th day of September, 1919, in the cases respectively entitled as follows: (1) “In the Matter of the Estate [73] of James Bicknell Castle, Deceased,” Numbered 1179, and (2) “In the Matter of the Assessment of the Inheritance Tax on the Estate of James Bicknell Castle, Deceased,” Numbered 1186.

I DO FURTHER CERTIFY that the original assignments of error, being pages 57 to 59, both inclusive, the original citation on writ of error, with acknowledgment of service thereof, being pages 68

to 70, both inclusive, and the original order for extension of time for preparation and transmission of record, filed January 16, 1922, being pages 71 to 72 of the foregoing transcript of record, are hereto attached and herewith returned.

I LASTLY CERTIFY that the cost of the foregoing transcript of record is \$39.50, and the said amount has been paid by Messrs. Robertson, Castle & Olson, attorneys for the plaintiffs in error.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of the Supreme Court of the Territory of Hawaii, at Honolulu, City and County of Honolulu, this 26th day of January, A. D. 1922.

[Seal] JAMES A. THOMPSON,
Clerk of the Supreme Court of the Territory of
Hawaii. [74]

[Endorsed]: No. 3833. United States Circuit Court of Appeals for the Ninth Circuit. William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees Under the Will of James Bicknell Castle, Plaintiffs in Error, vs. Harold K. L. Castle and The Territory of Hawaii, Defendants in Error. Transcript of Record. Upon Writ of Error to the Supreme Court of the Territory of Hawaii.

Filed February 8, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By PAUL P. O'BRIEN,
By Paul P. O'Brien,

In the Supreme Court of the Territory of Hawaii.

OCTOBER TERM, 1921.

No. 1332.

In the Matter of the Assessment of an Inheritance
Tax on the Estate of JAMES BICKNELL
CASTLE, Deceased.

**Order Extending Time to and Including February
28, 1922, for Preparation and Transmission of
Record (Original).**

Upon the applications of William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, plaintiffs in error, and good cause appearing therefor, and pursuant to Section 1 of Rule 16 of the United States Circuit Court of Appeals for the Ninth Circuit,—

IT IS THEREFORE ORDERED that the said William R. Castle, Lorrin A. Thurston and Alfred L. Castle, Trustees under the Will of James Bicknell Castle, plaintiffs in error, and the Clerk of this Court be, and they are hereby allowed until and including the 28th day of February, 1922, within which time to prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, the record in the above-entitled cause on assignments of error and all other papers required as part of said record.

Dated at Honolulu, T. H., this 16th day of January, 1922.

[Seal] (Signed) JAMES L. COKE,
Chief Justice of the Supreme Court of the Territory of Hawaii. [76]

CERTIFICATE.

Territory of Hawaii,
City and County of Honolulu,—ss.

I, James A. Thompson, Clerk of the Supreme Court of the Territory of Hawaii, do hereby certify that the foregoing document and attached hereto, is a full, true and correct copy of the original thereof, which is now on file in the office of the Clerk of the Supreme Court of the Territory of Hawaii, in the foregoing entitled cause, Numbered 1332.

WITNESS my hand and the Seal of the Supreme Court of the Territory of Hawaii, at Honolulu, this 16th day of January, A. D. 1922.

[Seal] JAMES A. THOMPSON,
Clerk of the Supreme Court of the Territory of Hawaii. [77]

[Endorsed]: No. 1332. Supreme Court, Territory of Hawaii. In the Matter of the Assessment of an Inheritance Tax on the Estate of James Bicknell Castle, Deceased. Order Extending Time for Preparation and Transmission of Record. Filed January 16, 1922, at 10:40 A. M. (Signed) J. A. Thompson, Clerk Supreme Court of Hawaii.

No. 3833. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Subdivision 1 of Rule 16 Enlarging Time to and Including February 28, 1922, to File Record and Docket Cause. Filed Jan. 25, 1922. F. D. Monckton, Clerk. Refiled Feb. 8, 1922. F. D. Monckton, Clerk.